

**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a), the Department of Human Services amends Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

These amendments change the Department’s procedures for implementation of the federal preadmission screening and annual resident review (PASARR) requirements for nursing facilities. These requirements, which are contained in 42 CFR Part 483, Subpart C, apply to all persons seeking care in a Medicaid-certified facility, regardless of the source of payment for that care.

PASARR regulations require that persons seeking to enter nursing facilities be reviewed to screen for mental retardation, a related condition, or mental illness (Level I review). If one of these conditions is indicated, an evaluation must be conducted to determine whether the person actually needs nursing facility care, needs specialized services for mental retardation or mental illness, or needs both nursing care and specialized services (Level II review). The state mental health authority (the Department’s Division of Mental Health and Disability Services) must approve the person’s evaluation and plan of care to ensure that the person is receiving appropriate care and treatment.

The Department has contracted with Ascend Management Innovations, LLC, to perform the evaluations required for Level II reviews. These amendments list conditions that temporarily or permanently exempt a person from Level II review. The amendments also provide that the Department will not approve payment for a person’s nursing facility care until a Level I review and (if indicated) a Level II review are completed. This provision is expected to result in cost avoidance for the state and is included in Governor Branstad’s list of cost containment recommendations.

The Council on Human Services adopted these amendments on August 10, 2011.

The Department finds that notice and public participation are impracticable because the Department’s appropriation for the fiscal year beginning July 1, 2011, assumes the implementation of the cost containment strategies recommended by the Governor without a delay for notice and public comment. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of these amendments should be waived, as authorized by 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

These amendments are also published herein under Notice of Intended Action as **ARC 9727B** to allow for public comment.

These amendments do not provide for waivers in specified situations since reviews are required by federal Medicaid regulations. However, the Department does have a general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments became effective September 1, 2011.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions in rule **441—81.1(249A)**:

“*Level I review*” means screening to identify persons suspected of having mental illness or mental retardation as defined in 42 CFR 483.102 as amended to October 1, 2010.

“*Level II review*” means the evaluation of a person identified in a Level I review to determine whether nursing facility services and specialized services are needed.

“*PASARR*” means the preadmission screening and annual review of persons with mental illness, mental retardation or a related condition who live in or seek entry to a Medicaid-certified nursing facility, as required by 42 CFR Part 483, Subpart C, as amended to October 1, 2010.

ITEM 2. Amend subrule 81.3(3) as follows:

**81.3(3) *Screening Preadmission review.*** All persons, regardless of the source of payment, seeking admission to a nursing facility shall also be screened by the IME medical services unit to determine if mental illness, mental retardation, or a related condition is present. The Iowa Medicaid program will cover the cost of this screening through the managed mental health contractor. The IME medical services unit shall complete a Level I review for all persons seeking admission to a Medicaid-certified nursing facility, regardless of the source of payment for the person's care. When a Level I review identifies evidence for the presence of mental illness or mental retardation, the department's contractor for PASARR evaluations shall complete a Level II review before the person is admitted to the facility.

a. Exceptions to Level II review. Persons in the following circumstances may be exempted from Level II review based on a categorical determination that in that circumstance, admission to or residence in a nursing facility is normally needed and the provision of specialized services for mental illness, mental retardation, or related conditions is normally not needed.

(1) The person's attending physician certifies that the person is terminally ill with death expected within six months, the person requires nursing care or supervision due to the person's physical condition, and the person is not a danger to self or others. If the person's nursing facility stay exceeds six months, a Level II review must be completed.

(2) The severity of the person's illness results in impairment so severe that the person could not be expected to benefit from specialized services, and the person does not present a danger to self or others. This category includes persons who are comatose, who function at brain-stem level, who are ventilator-dependent, or who have diagnoses such as Parkinson's disease, Huntington's chorea, amyotrophic lateral sclerosis, chronic obstructive pulmonary disease (COPD), or congestive heart failure (CHF).

(3) The person is suffering from delirium. Exemptions made on a basis of delirium are valid until the delirium clears or for seven days, whichever is sooner.

(4) The person is in an emergency situation that requires protective services with placement in the nursing facility. A Level II review must be completed if the admission lasts more than seven days.

(5) The admission is for the purpose of providing respite to the person's caregiver. If the nursing facility stay exceeds 30 days, a Level II review must be completed.

(6) The person has dementia in combination with mental retardation or a related condition.

(7) The person has been approved for specialized services in another facility based on a previous Level II evaluation, the specialized services still meet the person's needs, and the receiving facility agrees to provide the specialized services.

(8) The person is transferring directly from receiving acute hospital inpatient care and requires nursing facility services for the same acute physical illness for which hospital care was received, and the person's attending physician certifies before the admission that the person is likely to require less than 30 days of nursing facility services. If the person is later found to require more than 30 days of nursing facility care, a Level II review must be completed within 40 calendar days of the person's admission date.

(9) The person:

1. Is transferring to a nursing facility directly from receiving acute hospital inpatient care, and  
2. Requires nursing facility services for convalescence from the same acute physical illness for which the person received hospital care, and

3. Is clearly sufficiently psychiatrically and behaviorally stable enough for nursing facility admission, and

4. Before entering the facility, has been certified by the attending physician as likely to require less than 60 days of nursing facility services.

b. Outcome of Level II review. The Level II review shall determine whether the person seeking admission:

(1) Needs specialized services for mental illness as defined in paragraph 81.13(14) "b," using the procedures set forth in 42 CFR 483.134 as amended to October 1, 2010; or

(2) Needs specialized services for mental retardation or a related condition as defined in paragraph 81.13(14) “c,” using the procedures set forth in 42 CFR 483.136 as amended to October 1, 2010.

~~a. c.~~ The department’s division of mental health and disability services or its designee shall review each Level II evaluation and plan for obtaining needed specialized services before the person’s admission to a nursing facility to determine whether the nursing facility is an appropriate placement. ~~Final approval for initial admissions and continued stay of persons with mental illness, mental retardation, or a related condition is determined by the department of human services, division of mental health and disability services.~~

~~b. d.~~ Nursing facility payment under the Iowa Medicaid program will be made for persons with mental illness, mental retardation, or a related condition only if it is determined by the division of mental health and disability services that the person’s treatment needs will be or are being met.

ITEM 3. Amend rule 441—81.7(249A) as follows:

**441—81.7(249A) Continued review.**

**81.7(1) *Level of care.*** The IME medical services unit shall review Medicaid members’ need of continued care in nursing facilities, pursuant to the standards and subject to the appeals process in subrule 81.3(1).

**81.7(2) *PASARR.*** Within the fourth calendar quarter after the previous review, the PASARR contractor shall review all nursing facility residents admitted pursuant to paragraph 81.3(3) “c” to determine:

*a.* Whether nursing facility services continue to be appropriate for the resident, as opposed to care in a more specialized facility, and

*b.* Whether the resident needs specialized services for mental illness or mental retardation as described in paragraph 81.3(3) “b.”

This rule is intended to implement Iowa Code sections ~~249A.2(6) and 249A.3(2) “a.”~~ 249A.2(1), 249A.3(3), and 249A.4.

ITEM 4. Rescind and reserve paragraph **81.13(9) “f.”**

ITEM 5. Amend subrule 81.13(14) as follows:

**81.13(14) *Specialized rehabilitative services.*** When indicated, specialized services shall be provided to residents as follows:

*a. ~~Provision of Specialized rehabilitative services.~~* Specialized rehabilitative services shall be provided by qualified personnel under the written order of a physician. If specialized rehabilitative services such as, but not limited to, physical therapy, speech-language pathology, and occupational therapy, ~~and mental health rehabilitative services for mental illness and mental retardation,~~ are required in the resident’s comprehensive plan of care, the facility shall:

(1) Provide the required services; or

(2) Obtain the required services from an outside provider of specialized rehabilitative services.

*b. ~~Qualifications. Specialized services for mental illness.~~* ~~Specialized rehabilitative services shall be provided under the written order of a physician by qualified personnel. “Specialized services for mental illness” means services provided in response to an exacerbation of a resident’s mental illness that:~~

(1) Are beyond the normal scope and intensity of nursing facility responsibility;

(2) Involve treatment other than routine nursing care, supportive therapies such as activity therapy, and supportive counseling by nursing facility staff;

(3) Are provided through a professionally developed plan of care with specific goals and interventions;

(4) May be provided only by a specialized licensed or certified practitioner;

(5) Are expected to result in specific, identified improvements in the resident’s psychiatric status to the level before the exacerbation of the resident’s mental illness; and

(6) May include:

1. Acute inpatient psychiatric treatment. When inpatient psychiatric treatment may be prevented through specialized services provided in the nursing facility, services provided in the nursing facility are preferred.

2. Initial psychiatric evaluation to determine a resident's diagnosis and to develop a plan of care.

3. Follow-up psychiatric services by a psychiatrist to evaluate resident response to psychotropic medications, to modify medication orders and to evaluate the need for ancillary therapy services.

4. Psychological testing required for a specific differential diagnosis that will result in the adoption of appropriate treatment services.

5. Individual or group psychotherapy as part of a plan of care addressing specific symptoms.

6. Any clinically appropriate service which is available through the Iowa plan for behavioral health and for which the member meets eligibility criteria.

c. *Specialized services for mental retardation or a related condition.* "Specialized services for mental retardation or a related condition" means services that:

(1) Are beyond the normal scope and intensity of nursing facility responsibility;

(2) Involve treatment other than routine nursing care, supportive therapies such as activity therapy, and supportive counseling by nursing facility staff;

(3) Are provided through a professionally developed plan of care with specific goals and interventions;

(4) Must be supervised by a qualified mental retardation professional; and

(5) May include:

1. A functional assessment of maladaptive behaviors.

2. Development and implementation of a behavioral support plan.

3. Community living skills training for members who desire to live in a community setting and for whom community living is appropriate as determined by the Level II evaluation. Training may include adaptive behavior skills, communication skills, social skills, personal care skills, and self-advocacy skills.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/7/11.